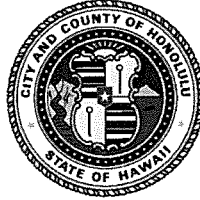


PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8007 • FAX: (808) 768-6743
DEPT. WEB SITE: www.honoluluudpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



September 13, 2013

KA'IULANI K. SODARO, Chair
CORD D. ANDERSON, Vice-Chair
GAYLE PINGREE
RODNEY KIM
JAMES C. PACOPAC
ARTHUR B. TOLENTINO
DANIEL S. M. YOUNG
STEVEN S. C. CHAN
DEAN HAZARD

RECEIVED
CITY CLERK
CITY OF HONOLULU
SEP 13 AM 10:02

The Honorable Ernest Y. Martin, Chair
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Martin and Councilmembers:

SUBJECT: Request for Amendments to Chapter 21, Revised Ordinances of Honolulu 1990
(The Land Use Ordinance), Relating to Signs

The Planning Commission held a public hearing on September 4, 2013 on the above subject matter. No public or written testimonies were received. The public hearing was closed on September 4, 2013.

The Planning Commission voted unanimously on September 4, 2013 to accept the Director of the Department of Planning and Permitting's (DPP) recommendation to deny the proposed amendments to the Land Use Ordinance (LUO), relating to signs. The Planning Commission also recommended City Council consider, for the purposes of signs, the Land Use [Ordinance] definition of private schools, universities and colleges.

Attached is the report from the Director of the Department of Planning and Permitting and the original copy of the draft Bill.

Sincerely,

for Ka'iulani K. Sodaro
Ka'iulani K. Sodaro, Chair
Planning Commission

APPROVED:

Kirk Caldwell
Kirk Caldwell
Mayor

APPROVED:

George I. Atta
George I. Atta, FAICP, Director
Department of Planning and Permitting

Ember Lee Shinn
Ember Lee Shinn
Managing Director

KKS:gct
Attachments

Authorization George I. Atta
Advertisement Aug. 23, 2013
Public Hearing Sept. 4, 2013

DEPARTMENT OF PLANNING AND PERMITTING

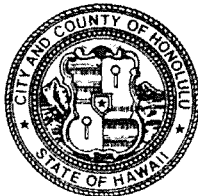
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

(NA)

August 1, 2013

MEMORANDUM

TO: Kaiulani K. Sodaro, Chair
and Members of the Planning Commission

FROM: *George I. Atta*
George I. Atta, FAICP, Director
Department of Planning and Permitting

SUBJECT: Request for Amendments to Chapter 21, Revised Ordinances of Honolulu 1990
(The Land Use Ordinance), Relating to Signs

Transmitted for appropriate action is my report and recommendation for a proposed amendment to the Land Use Ordinance (LUO), relating to signs, as follows:

Resolution No. 12-178, Relating to Signs: Adds a new subsection (g) to LUO Section 21-7.50 ("Special regulations for certain uses") that would permit private elementary, intermediate and high schools and colleges and universities (other than business colleges) to display temporary signs to substantially the same extent as that allowed to public schools by a Minor Modification to the Existing Use Approval for all Oahu public schools granted by the City Department of Land Utilization [now the Department of Planning and Permitting (DPP)] on May 15, 1991.

The DPP consulted with the Department of the Corporation Counsel in the drafting of this report. The resolution and respective draft bill for the proposed LUO amendments are also attached. We are not recommending that the proposal be approved. We would be happy to answer any questions you may have concerning this matter during the public hearing.

GIA:nw

Attachments

RECEIVED
13 AUG -7 P4:15
CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PLANNING AND PERMITTING

LUO AMENDMENT 2013 – A COUNCIL-INITIATED PROPOSAL RELATING TO SIGNS

Staff Report

I. Background

On November 14, 2012, the City Council adopted Resolution No. 12-178, initiating amendments to the Land Use Ordinance (LUO) relating to signs. The proposed ordinance states that “the purpose of this ordinance is to amend the provisions of the Land Use Ordinance, ROH [Revised Ordinances of Honolulu] Chapter 21, relating to signs.” With this goal in mind, the Council is proposing a related LUO amendment. The amendment adds a new subsection (g) to LUO Section 21-7.50, “Special regulations for certain uses,” to read as follows:

“(g) Private elementary, intermediate and high schools and colleges and universities (other than business colleges). In addition to signage allowed by general and zoning district sign standards and any permit or approval under this chapter, additional signage beyond that provided for special event displays is allowed as follows:

- (1) Only events held on school grounds, or sponsored by the particular institution and its affiliated organizations, are allowed additional signage.*
- (2) The special event display may include portable signs, banners, and wind signs erected outdoors on school grounds.*
- (3) Special event displays shall be limited to a maximum of three signs with a maximum cumulative area of 36 square feet per street frontage. Each sign shall not be displayed for more than 14 consecutive days.*
- (4) No special event displays shall be erected unless approved by the principal or president of the subject institution or his or her authorized representative.”*

In its Resolution No. 12-178 (copy attached), the Council noted that, on May 15, 1991, the former Department of Land Utilization [DLU; now known as the Department of Planning and Permitting (DPP)], granted a “blanket waiver and Minor Modification to an Existing Use (EU) Permit for all public schools” (i.e., those run by the Department of Education) to waive LUO requirements relating to temporary signs. The Council has referred to this as “the DLU zoning waiver.” The Resolution states that the DLU zoning waiver for all public schools enables those schools to display temporary signs to advertise special events such as upcoming meetings, class reunions, and other school events and community activities, without being subject to the current LUO requirements limiting such displays to one event per six-month period, and limiting the time of display to no more than seven consecutive days. It further makes the argument that private schools and universities have many of the same special events as public schools, including community meetings, reunions, and sports events, but they cannot display the additional signage allowed to public schools under the DLU zoning waiver because zoning waivers are only available to public (or public/private) uses and structures, and utility installations are under the LUO. The resolution concludes that “as a result of the foregoing, the Council desires to propose amendments to the LUO to permit private schools and universities to display temporary signs to substantially the same extent as that allowed to public schools under the DLU zoning waiver.”

II. FINDINGS OF FACT

- A. **Sign Regulations:** The proposed changes to Article 7 of the LUO address sign regulations for special event displays; LUO Section 21-7.20 including special event displays as a particular type of “temporary signs.” The LUO defines “special event displays” as follows:

“Special event displays” means signs erected on the premises of an establishment having a grand opening or special event. Special event displays are to advertise an opening, occasion, or particular event, and not an establishment, service, price, product, or commodity.

The LUO establishes the following standards for special event displays: “The special event display may include portable signs, banners and wind signs erected on the premises of the event. Special event displays are limited to one event per six-month period, and shall not be displayed for more than seven consecutive days.”

- B. **DLU Zoning Waiver:** On May 15, 1991, the DLU approved a Minor Modification to an EU permit that had been approved for all Oahu public schools to waive the LUO standards relating to temporary signs (see Part A, above). This Minor Modification, which was granted to the State Department of Accounting and General Services, allowed additional temporary signage beyond that provided for special event displays, pursuant to the provisions for granting an LUO waiver (Section 21-2.130). The DLU Zoning Waiver permitted the following additional special event displays for public schools:

1. Only events held on school grounds, or sponsored by the particular school and its affiliated organizations are allowed additional signage beyond that prescribed by the underlying zoning, as reflected herein. Included are community meetings, reunion announcements, and sport events.
2. The special event display may include portable signs, banners, and wind signs erected outdoors on school grounds.
3. Special event displays shall be limited to three signs with a maximum cumulative area of 36 square feet per street frontage. Each sign shall not be displayed for more than 14 consecutive days.
4. No special event displays shall be erected unless approved by the principal of the subject school or his authorized representative.

The DLU granted this Zoning Waiver to address a particular problem faced by public schools and their users with respect to temporary signage needed to advertise upcoming meetings and special events. The DLU noted that the LUO limits temporary signs to one event per six-month period, and that they could not be displayed for more than seven consecutive days. The DLU stated that “[t]his creates a problem in advertising monthly meetings, numerous class reunions, and other school events and community activities since only two of these numerous events are allowed to have outdoor signs during a one-year period.” The DLU approved the zoning waiver to address this concern. On October 2, 1991, the DLU also addressed an issue relating to the 14-consecutive-day

display limitation established by the related Modification. The DLU ruled that, for an ongoing event at a public school, such as a recycling drive, one day must elapse after the 14-consecutive-day period before the sign could be redisplayed.

- C. **Private Schools, Colleges, and Universities:** The LUO allows private elementary, intermediate, and high schools in the AG-2 General Agricultural, Country, Residential, Apartment, and Apartment Mixed Use Districts subject to the approval of a Conditional Use Permit (CUP, Minor) from the Director of the Department of Planning and Permitting (DPP). The LUO establishes private elementary, intermediate, and high schools as a permitted use in the Business and Business Mixed Use Districts. Private universities and colleges, other than business colleges (which are not included in the proposal), are permitted in virtually every zoning district subject to an approved Plan Review Use (PRU) permit from the Honolulu City Council. Pursuant to LUO Section 21-2.90-2(c), conditional uses can be approved by the Director of the DPP by modifying the underlying sign regulations. The sign regulations for permitted uses in the business and business mixed use districts are enumerated in LUO Sections 21-7.40(f), (g) and (h). Pursuant to LUO Section 21-2.120-2(d), the sign requirements for PRUs are to be specified in the plans approved by the City Council.

III. Analysis

- A. **Equal Protection Issues:** The City Council is proposing to amend the LUO to give private schools, colleges, and universities the same flexibility relating to special event displays that State public schools obtained via the approval of a discretionary Minor Modification to an EU permit it received, under LUO waiver provisions. While this may be understandable, the proposal nevertheless raises substantial constitutional issues that the DPP has reason to believe will not survive legal challenges. In preparing its Report, the DPP contacted the Department of the Corporation Counsel (COR) for its opinion on the constitutionality of the proposal. In its response, the COR advised that this proposal to amend the LUO sign regulations was likely to be successfully challenged under the “rational basis test” of the Equal Protection clause, because it fails to provide a rational purpose for why private schools and universities should be treated dissimilarly to all other land uses. The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” This provision thus requires that all similarly situated individuals be treated similarly.

The DPP is concerned that the proposal establishes as a matter of law within the LUO less restrictive sign regulations for private schools, colleges, and universities; and, it does this without the need to first obtain a discretionary approval from the DPP (such as was necessary in order to obtain the public school waiver). This can be challenged as unconstitutional, since it is effectively treating similarly situated persons, namely public schools, as well as churches, private clubs, and community centers, at a disadvantage. Ironically, Resolution 12-178 states that the proposed LUO amendments are intended to give private schools the same signage flexibility that is allowed to public schools via its waiver. This is because private schools (and colleges and universities) are not eligible for the LUO zoning waiver. However, this explanation fails to recognize other similar land use approvals available to private schools that can achieve a similar outcome as that enjoyed by public schools; and, falls short of illustrating a rational relationship between the disparity of treatment necessary between private schools and universities and all other land uses, such as meeting facilities and day-care facilities.

To pass the rational basis test, the proposed ordinance should be purposed on how private schools and universities are dissimilar to all other land uses, rather than how they are similar to public schools. The public schools met the reasonableness test under the DLU zoning waiver standard in stating that the LUO temporary sign limitations “creates a problem in advertising monthly meetings, numerous class reunions, and other school events and community activities since only two of these numerous events are allowed to have outdoor signs during a one year period.” But, private schools, colleges, and universities may in fact not be so similar to public schools in this respect: Public schools routinely offer their facilities to a vast array of community organizations which hold substantially more community meetings and events, such as neighborhood board meetings, because they are quite literally “public” facilities. This fact, and not the similarity of educational purposes, may render private schools, colleges, and universities more similar to other land uses, such as churches and private clubs, than to public schools.

Furthermore, regarding the unavailability of the DLU zoning waiver to private schools, colleges, and universities, there are other land use approvals available to private schools, colleges, and universities which effectively can provide similar entitlements for temporary signs. In fact, should such a request be justified, a private school, college, or university can even obtain entitlements that are more generous than those granted to public schools via the zoning waiver. The advantage of undergoing a land use approval compared to an LUO amendment is that the discretionary review of the land use approval requires that the Applicant meet and articulate standards of review that are similar to the rational basis standard. This then can bolster the City’s defense to an Equal Protection challenge. Essentially, if private schools, colleges, and universities are truly similar in nature to public schools, then they should use similar land use approval processes to obtain needed signage flexibility. That is not occurring with this proposal, since it relies on an LUO amendment to establish a separate entitlement, rather than providing a similar procedure for review and approval. And, fortunately such procedures already exist.

- B. **Regulatory Issues:** While the DPP does not necessarily foresee any particular regulatory or enforcement problems if the Council were to enact the proposal into law, it can reasonably be predicted that it will encourage, to an unknown extent, the spread of temporary signage into those neighborhoods and zoning districts where private schools, colleges, and universities are permitted. As noted earlier, private universities and colleges are allowed in every zoning district, subject to receipt of a PRU approval from the City Council. Private schools, as conditional uses, are common in residential neighborhoods.
- C. **Alternatives:** Rather than amend the LUO to achieve an entitlement to “by-right” temporary signage similar to that granted to public schools via a zoning waiver, private schools, colleges, and universities should apply for appropriate land use approvals. This way, a rational basis for the expanded entitlement is established through a similar regulatory process (as that employed for the zoning waiver) and there will be no violation of due process with respect to other similar uses that would otherwise be denied this kind of entitlement. Private schools, colleges, and universities already enjoy regulatory access via the LUO to similar discretionary approvals (as that provided by the waiver) which allow them to achieve similar flexibility with respect to signage in general, and special event displays in particular.

Colleges and universities are allowed in all zoning districts pursuant to an approved PRU permit, which the Council grants via the adoption of a resolution. Pursuant to LUO Section 21-2.120-2(d), the sign requirements for the campus are to be established as part of the PRU. Subsection (e) of this LUO section also allows the university to apply to the DPP for a minor amendment to the approved PRU in order to modify its sign plan to address temporary event signs in a manner similar to that available to public schools via the DLU zoning waiver. Private schools are permitted in the AG-2 General Agricultural, Country, Residential, Apartment, and Apartment Mixed Use Districts with an approved CUP. Pursuant to LUO Section 21-2.90-2(c), the DPP Director may grant a CUP by modifying the application of the sign regulations. Therefore, a school may request temporary event signage similar to that available to public schools (via the DLU zoning waiver) as part of its CUP (or EU permit) application. For existing schools that already have an approved CUP or EU permit, a Minor Modification application can be submitted to the DPP to request modifications to the signage. Private schools are permitted uses in the various Business and Business Mixed Use Districts, where they enjoy up to a maximum of 250 square feet of business sign area, which may include advertising on-site events, e.g., a bulletin board sign. See LUO subsections 21-7.40(f), (g), and (h).

III. Recommendation

Resolution No. 12-178 — Not Recommended: Amending the LUO to allow private schools, colleges, and universities “by-right” to have the same temporary event display flexibility that has been granted to public schools will raise a constitutional issue of Equal Protection. Specifically, the proposal will create a special benefit to a specific class (i.e., private schools, colleges, and universities) that is not available to other similar land uses, such as churches, community centers, private clubs, and day-care facilities. This proposal fails to provide a rational relationship between the disparity of treatment between private schools, colleges, and universities, and all other land uses, as well as a legitimate governmental purpose for the allowance. Furthermore, the amendment can encourage sign clutter, impacting residential and other areas where private schools, colleges, and universities are developed. Finally, the amendments are unnecessary, since private schools and universities already enjoy regulatory access to similar discretionary approvals that were granted to public schools in 1991. These discretionary approvals allow private schools, colleges, and universities to achieve similar flexibility with respect to signage in general, and special event displays in particular, as that given to the public schools. Accordingly, the DPP does not support and is not recommending approval of the proposal to revise the LUO sign regulations, as initiated by the City Council via Resolution No. 12-178.

Attachments



RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), AS AMENDED, RELATING TO SIGNS.

WHEREAS, on May 15, 1991, the City Department of Land Utilization (now the Department of Planning and Permitting) granted a blanket waiver and minor modification to the Existing Use Permits for all public schools, to waive the requirements of the Land Use Ordinance ("LUO") relating to temporary signs (the "DLU zoning waiver"); and

WHEREAS, the DLU zoning waiver enables public schools to display temporary signs to advertise special events such as upcoming meetings, class reunions, and other school events and community activities, without being subject to the LUO requirements limiting such displays to one event per six-month period and limiting the time of display to no more than seven consecutive days; and

WHEREAS, under the DLU zoning waiver, public schools are allowed additional signage as follows:

1. Only events held on school grounds, or sponsored by the particular school and its affiliated organizations, are allowed additional signage beyond that prescribed by the underlying zoning. Included are community meetings, reunion announcements, and sports events.
2. The special event display may include portable signs, banners, and wind signs erected outdoors on school grounds.
3. Special event displays shall be limited to three signs with a maximum cumulative area of 36 square feet per street frontage. Each sign shall not be displayed for more than 14 consecutive days.
4. No special event displays shall be erected unless approved by the principal of the subject school or the principal's authorized representative;

and

WHEREAS, private schools and universities have many of the same special events as public schools, including community meetings, reunions, and sports events, but they cannot display the additional signage allowed to public schools under the DLU zoning waiver because zoning waivers are only available to public (or public/private) uses and structures and utility installations under the LUO; and



RESOLUTION

WHEREAS, as a result of the foregoing, the Council desires to propose amendments to the LUO to permit private schools and universities to display temporary signs to substantially the same extent as that allowed to public schools under the DLU zoning waiver; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended ("RCH"), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and

WHEREAS, ROH Chapter 2, Article 24, establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973, as amended, and ROH Chapter 2, Article 24, to process the proposed amendment to Chapter 21, ROH 1990 (the Land Use Ordinance), attached hereto as Exhibit "A," in the same manner as if the proposal had been proposed by the Director; and

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and



RESOLUTION

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk shall transmit copies of this Resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

RESOLUTION 12-178

Introduced: 07/18/12 By: ERNEST MARTIN

Committee: ZONING AND
PLANNING

Title: RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), AS AMENDED, RELATING TO SIGNS.

Links: RES12-178
CR-311

Voting Legend: Y= Aye, Y* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

NOTE: EFFECTIVE AUGUST 16, 2012, COUNCILMEMBER TULSI GABBARD, REPRESENTING COUNCIL DISTRICT VI, RESIGNED FROM OFFICE. (Refer to Communication CC-231)

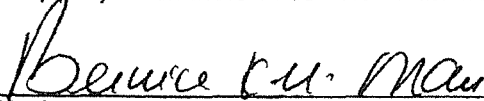
ZONING AND PLANNING	08/30/12	CR-311 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
------------------------	----------	---

NOTE: EFFECTIVE NOVEMBER 1, 2012, COUNCILMEMBER ROMY M. CACHOLA, REPRESENTING COUNCIL DISTRICT VII RESIGNED FROM OFFICE. (Refer to Communication CC-298)

ON NOVEMBER 14, 2012, THE APPOINTMENT OF JOEY MANAHAN WAS APPROVED (Refer to RES12-299) AND HE WAS SWORN INTO OFFICE AS A MEMBER OF THE HONOLULU CITY COUNCIL REPRESENTING DISTRICT VII TO FILL THE REMAINING TERM OF FORMER COUNCILMEMBER ROMY M. CACHOLA.

COUNCIL	11/14/12	CR-311 AND RESOLUTION 12-178 WERE ADOPTED.							
ANDERSON	Y	BERG	Y	CHANG	Y	GARCIA	Y	HARIMOTO	Y
KOBAYASHI	Y	MANAHAN	Y	MARTIN	Y				

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


BERNICE K. N. MAU, CITY CLERK

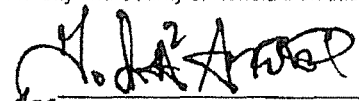

ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER

EXHIBIT A



A BILL FOR AN ORDINANCE

RELATING TO SIGNS.

BE IT ORDAINED by the People of the City and County of Honolulu:

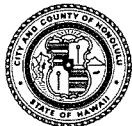
SECTION 1. Purpose. The purpose of this ordinance is to amend the provisions of the Land Use Ordinance, ROH Chapter 21, relating to signs.

SECTION 2. Section 21-7.50 ("Special regulations for certain uses."), Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new subsection (g) to read as follows:

"(g) Private elementary, intermediate and high schools and colleges and universities (other than business colleges). In addition to signage allowed by general and zoning district sign standards and any permit or approval under this chapter, additional signage beyond that provided for special event displays is allowed as follows:

- (1) Only events held on school grounds, or sponsored by the particular institution and its affiliated organizations, are allowed additional signage.
- (2) The special event display may include portable signs, banners, and wind signs erected outdoors on school grounds.
- (3) Special event displays shall be limited to a maximum of three signs with a maximum cumulative area of 36 square feet per street frontage. Each sign shall not be displayed for more than 14 consecutive days.
- (4) No special event displays shall be erected unless approved by the principal or president of the subject institution or his or her authorized representative."

SECTION 3. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the underscoring.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20__.

KIRK CALDWELL, Mayor
City and County of Honolulu